

May 20, 2011

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: In re Leased Commercial Access; Development of Competition and Diversity in
Video Programming Distribution and Carriage, MB Docket No. 07-42**

Dear Ms. Dortch:

On May 19, 2011, Jim Coltharp, Chief Policy Advisor for FCC & Regulatory Policy at Comcast Corporation (“Comcast”), and David Murray and Michael Hurwitz of Willkie Farr & Gallagher LLP, representing Comcast, met with Sherrese Smith, Legal Advisor for Media, Consumer and Enforcement Issues to Chairman Julius Genachowski. On May 19, 2011, Jim Coltharp of Comcast, and David Murray, Michael Hurwitz, and the undersigned of Willkie Farr & Gallagher LLP, met with Steven Broecker, Michelle Carey, David Konczal, William Lake, Mary Beth Murphy, Nancy Murphy, and Krista Witanowski of the Media Bureau. In each meeting, we discussed issues related to the Commission’s notice of proposed rulemaking on program carriage.

Specifically, we noted that there is currently a program carriage item on the agency’s circulation list, notwithstanding that the comment cycle closed in 2007 and very few filings have been made since late 2008. We pointed out that, since that time, there have been numerous program carriage complaint proceedings at the agency and one program carriage arbitration litigated pursuant to the Adelphia Order. We noted that the parties’ experiences in some of the recent program carriage cases, and other intervening industry developments, may be highly relevant to any revised or additional program carriage rules.

In addition, we made the following points:

- Expeditious decisions benefit all parties by reducing costs, so long as the due process rights of the parties are respected. To that end, we urged the Commission, in any action it takes, to consider adopting more exacting pleading requirements and better enforcement of existing rules governing the initial pleadings. For example, the Commission should require complainants to submit supporting evidence and documentation to support the assertions and arguments in the complaint. Defendants would be required to do the same. We also suggested

that enforcement of the requirement that complainants state with specificity the relief they are seeking in their complaints would aid the Commission's expeditious review.

- The current pleading cycle could be improved to ensure that the Media Bureau has the information it needs to make a timely determination as to whether a complainant has made a prima facie case. For example, the current rules give a complainant as much as a year to prepare its complaint and supporting evidence, but only permit a defendant 30 days to answer, including responding to any expert reports the complainant has submitted. Allowing defendants 60 days to answer complaints would permit a fuller response and more probing analysis of the evidence and data proffered by the complainant, which may promote more efficient and expeditious prima facie determinations by the Media Bureau.
- The prima facie review by the Media Bureau should be a robust determination that takes into account evidence and arguments advanced by both parties in their pleadings, including objective data and other evidence that might support or negate a claim that two networks are "similarly situated," that demonstrate whether an MVPD's actions are consistent with the marketplace, or that establish whether an MVPD has acted consistently with bargained-for rights under an existing market-based agreement.
- The Commission should decline invitations to expand the program carriage rules in ways that would cause uncertainty and delay, increase the costs and burdens of disputes, or raise significant First Amendment concerns, for example, by mandating carriage before the Commission has determined a violation has occurred, subjecting carriage negotiations to formal good faith bargaining requirements, or broadening the program carriage attribution standard beyond the statutory scope and purpose.

Kindly direct any questions regarding this matter to my attention.

Sincerely,

/s/ Ryan G. Wallach

Ryan G. Wallach

Counsel for Comcast Corporation

cc: Steven Broecker
Michelle Carey
David Konczal
William Lake
Mary Beth Murphy
Nancy Murphy
Sherrese Smith
Krista Witanowski